

IC 8-3

ARTICLE 3. RAILROADS GENERALLY

IC 8-3-1

Chapter 1. Railroad Regulation—Department of Transportation

IC 8-3-1-1

Rates and charges; services to public; facilities and equipment; crossings; connecting tracks

Sec. 1. (a) The Indiana department of transportation (referred to as "the department" in this chapter) has the duty, as provided in this chapter:

- (1) to supervise all railroad freight and passenger tariffs, and to adopt all necessary rules to govern car distribution and delivery, train service and accommodations, and demurrage rules and charges, and for car service, or the transfer and switching of cars from one (1) railroad to another at junction points, or where entering the same city or town, and to supervise charges therefor;
- (2) to require and supervise the location and construction of sidings and connections between railroads;
- (3) to supervise the crossing of the tracks and sidetracks of railroads by other railroads in process of construction or extension, and to prescribe the terms and conditions and manner in which the crossings shall be made, and the character thereof, whether at grade or over or under grade, and the authority vested on April 15, 1905, in the auditor of state under state statutes with reference to the crossings of railroads by other railroads, or by railroads operated by electricity, and the installation and maintenance of interlocking appliances at the crossings;
- (4) to supervise and regulate private car line service and private tracks where the tracks are operated in connection with any railroad in this state or share in the rates or earnings of any common carrier subject to the provisions of this chapter;
- (5) to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads; and
- (6) to enforce the same by proceedings for the enforcement of penalties provided by law through courts of competent jurisdiction.

The classification of freight adopted by the railroads shall be uniform and shall apply to and be the same for all railroads subject to the provisions of this chapter.

(b) The department has the duty, as provided in this chapter, upon the failure of the railroad companies so to do, to fix and establish for all or any connecting lines of railroads in this state reasonable joint rates of freight, transfer, and switching charges for the various classes of freight and cars that may pass over two (2) or more lines of the railroads.

(c) If any two (2) or more connecting railroad companies shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers, or cars over their lines, the department shall, as provided in this chapter, fix the pro rata part of the charges to be received by each of said connecting lines.

(d) As provided in this chapter, the department has the duty to:

(1) alter, change, amend, or abolish any classification or rates established by any railroad company or companies whenever found to be unjust, unreasonable, or discriminative;

(2) to make and substitute for the unjust, unreasonable, or discriminative rates or classifications amended, altered, or new classifications or rates, which shall be put into effect by the railroad company or companies; and

(3) in case any carrier fails to have any rate or schedule of rates to any point on its line or on any connecting line in this state, the department, as provided in this chapter, may make and order a rate or schedule of rates, which shall be published and put into effect by the carrier or carriers.

(e) The department may adopt and enforce the rules and modes of procedure it considers proper to hear and determine complaints and for the conduct of all investigations held by it or its appointees and to regulate the conduct of the department's inspectors and appointees.

(f) The department:

(1) shall enforce, as provided in this chapter, reasonable and just rates of charges for each railroad company subject to this chapter for the use or transportation of loaded or empty cars on its road; and

(2) may enforce, for each railroad or for all railroads alike, reasonable rates for storing and handling of freight, and for the use of cars not loaded or unloaded within forty-eight (48) hours after notice of arrival and placement for service, not to include Sundays or legal holidays.

(g) The department shall enforce reasonable rates as provided in this chapter for the transportation of passengers over each or all of the railroads subject in this chapter, which rates shall not exceed the rates fixed by law. The department may enforce reasonable rates, tolls, or charges for all other services performed by any railroad subject to this chapter.

(h) Under this section, the power of the department extends to any case where any person, firm, corporation, limited liability company, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization, complains of anything done or omitted to be done by any common carrier subject to this chapter, and applies to the department by petition, which shall briefly state the facts. A statement of the charges thus made shall be forwarded by the department to the common carrier, who shall be called upon to satisfy the complaint or to answer the complaint in writing, within a reasonable time specified by the department. If the carrier does not satisfy the complaint within the time specified, or there appears to be any reasonable ground for investigating the

complaint, the department shall investigate the matters complained of, and no complaint shall, at any time, be dismissed because of the absence of direct damage to the complainant. The department may, after the investigation, make the corrections, alterations, changes, or new rules or rates as may be necessary to prevent injustice or discrimination to the party complaining or to any other person, firm, limited liability company, or corporation. When any rate, charge, classification, or rule is made, changed, modified, or added to by the department, such order shall operate for the benefit of all persons or corporations situated similarly with the complaining party.

(i) Every such carrier shall annually, before April 1, file with the department, under the signature and oath of the department's principal accounting officer, a detailed report, in the form prescribed by the department, of all the carrier's financial and business operations in Indiana for the year ending on the preceding December 31. The report shall embrace the other information and facts as shall be prescribed by the Interstate Commerce Commission for reports of interstate carriers thereto, and the reports shall be in the form prescribed, insofar as the same is applicable. Any carrier failing to make the report for thirty (30) days after the same is due, unless the time therefor is extended by the department, shall forfeit and pay to the state the sum of one hundred dollars (\$100) for each day of the default, to be collected as provided in this chapter.

(j) All carriers subject to this chapter and operating railroads shall afford reasonable and proper facilities for the interchange of traffic between the carriers' respective lines at junction points, and for there receiving, forwarding, and delivering passengers and property, and each carrier shall transfer, deliver, and accept, without delay or discrimination, and promptly forward, all freight or cars, loaded or empty, and all or any passengers there tendered by the connecting lines and destined to any point on the carrier's line or any connecting line. The department may not, by virtue of any provision in this chapter compel any railway company to carry any freight prohibited by any municipal ordinance or contract.

(k) Every carrier engaged in handling freight in carload lots may be required, upon application therefor by the party having use for the same, to construct upon the carrier's property and properly connect with the carrier's line, when the same can be done with safety, and is reasonably necessary, all siding, switch, spur, or turnout tracks, necessary to accommodate the business of any elevator, mill, factory, or other industrial enterprise that is on or after April 9, 1907, constructed abutting the carrier's line, and where there is no space for the proprietor thereof to construct the same on the proprietor's property. Title to any siding shall remain in the carrier, which may remove the same whenever it becomes necessary so to do to accommodate the public interests, upon payment of the value of the material in the track, if the cost of original construction shall have been paid by the industry, and providing that the track may be used by the carrier in performing switching service to any industry located beyond the elevator, mill, factory, or other industrial enterprise. In

case the carrier and the proprietor cannot agree upon the terms for constructing and maintaining the facilities, the department, upon application, shall prescribe the terms upon which the same shall be constructed and maintained. Every carrier shall, upon request and upon the payment of reasonable compensation therefor, construct a switch connection from the carrier's line to and connecting with any lateral or branch line of railroad, or any private or industrial switch, which shall be constructed adjacent to the carrier's line and property in this state, whenever the connection is reasonably practicable and can be put in with safety, and a reasonable necessity therefor exists. In case of a disagreement thereon, the department, upon application, shall determine the compensation for making the connection and maintaining same.

(l) All carriers handling freight in carload lots, at all points in this state where they connect with, or cross, at, over, or under grade, the line or lines of any one (1) or more carriers engaged in like business, shall construct and maintain proper interchange tracks and switches at all such points so that carload traffic may be conveniently interchanged between the carriers at the points, and, for the purpose of enabling the carriers to comply with this requirement, they are empowered to jointly purchase and own, or appropriate, under state statutes concerning the exercise of the powers of eminent domain, any additional lands or property necessary to enable them to comply with this requirement. Upon a sufficient showing, the department may relieve the carrier from the operation of this provision until the time as the necessity therefor shall arise. In case the connecting carriers cannot agree as to the division of the expense of making and maintaining the facilities and tracks, the department, upon application therefor, shall determine the same.

(m) Every connecting carrier shall, upon the order of the department, made upon complaint filed and after a hearing is had, as provided in this chapter, received from the carrier's connecting lines, at junction points all carload shipments tendered by the connecting line, and, upon payment of reasonable transfer or switching charges therefor, transport the car over the carrier's tracks and deliver the same to the consignee on the consignee's private track connected with the tracks. Every connecting carrier, at junction or terminal points, upon like complaint, proceedings, and order of the department, as provided in this subsection, shall accept from any other connecting carrier any empty car there tendered, and, upon payment of a reasonable switching charge therefor, shall transport such empty car to any industry or private track connected with the carrier's line at such junction or terminal point for loading, and return the same, when loaded, to the line making the delivery. Any carrier is not required to perform switching services in any case where the carrier can transport the freight to destination and point of delivery with reasonable dispatch and at the same rate as the line offering the car, and shall, at the time offer the car and be prepared to perform the services. Every carrier subject to this chapter who shall receive a car or cars belonging to another carrier at a terminal or junction point

shall, upon the demand of the owner of the car or cars, promptly return the same, loaded or empty, to the terminal or junction point by the most direct available route, and any court of competent jurisdiction shall, upon proper application, have full power and authority to enforce this requirement.

(n) All railroad companies doing business in this state shall, upon the demand of any person or persons interested, establish reasonable joint rates for the transportation of freight between points upon respective lines within this state, and shall receive and transport freight and cars over the route or routes as the shipper may direct. Carload lots shall be transferred without unloading into other cars, unless unloading into other cars shall be done without charge therefor to the shipper or receiver of the carload lots, and unless the transfer be made without unreasonable delay. Less than carload lots shall be transferred into the connecting railway's cars at cost, which shall be included in and made a part of the joint rate adopted by the railroad companies, or established as provided in this chapter.

(o) No carrier shall construct a line of railroad across another line of railroad in this state without the approval of the department, nor until an application therefor and an instrument of appropriation to acquire the rights has been filed with the department and notice given to the connecting lines and a hearing thereon had. The department may, in any proceedings, determine in what manner and at what point the crossing shall be made, and whether the crossing shall be at grade, or over or under grade. When the department determines the place and manner of crossing, it shall determine the damages, if any, which the junior line shall pay to the senior line or lines for the privilege of crossing. The department, by the department's order, shall determine and define the manner in which the crossing shall be made, and thereafter maintained, and the manner in which the expense thereof shall be apportioned between the connecting lines, and, in what manner, the work shall be performed, and by whom and within what time, and other matters as may be necessary to fully determine the controversy between the parties. The junior line, upon the payment or tender of the damages awarded, may proceed with the construction of the crossing, in accordance with the order of the department. In case any crossing shall be on a street in any city or incorporated town in this state, then the order of the department concerning the same shall not become operative until the legislative body of the city or town shall consent thereto by resolution.

(p) Any carrier which shall be dissatisfied with the damages awarded by the department may commence in any circuit or superior court of the county where a crossing is located, an action against the other connecting line or lines at the point, for the purpose of having damages reassessed by the court in accordance with state statutes concerning the exercise of the powers and privileges of eminent domain, and, in the court, the only question triable shall be the amount of damages properly chargeable against the crossing line on account of the crossing being made and constructed in the manner fixed and upon the terms prescribed by the department therefor, and

to be maintained in the manner and upon the terms prescribed by the department. Any interurban railroad company may cross with the interurban railroad company's feed and transmission wires over or under the right-of-way, tracks, wires, and railroad of any steam interurban railroad company, and the wires and other appliances of any telegraph, telephone, electric light, power, or other company maintaining wires, after an application therefor and an instrument of appropriation to acquire the right has been filed with the department and at least ten (10) days notice thereof given to the company whose property is to be crossed and a hearing had thereon. The department may determine in what manner the crossing shall be made at any point other than upon streets and highways and, as to crossings of streets and highways, the applicable law shall control the rights of the parties. The department, by the department's order, shall determine and define the manner in which the crossings shall be made and thereafter maintained, and the manner in which the expense thereof shall be apportioned between the crossing companies, and in what manner the work shall be performed and by whom and within what time, and other matters as may be necessary to fully determine the controversy between the parties. The department may determine the amount of damages, if any, allowed to the company whose property is to be crossed at any point other than upon streets or highways by feed or transmission wires, and any party dissatisfied with any award of damages may appeal therefrom to the circuit court of the proper county upon the question of damages only. Upon the payment or tender of damages, if any, allowed by the department, the company desiring to cross may proceed with the construction of the company's feed or transmission wires over or under the right-of-way, tracks, wires, railroad, and other appliances of any of the companies.

(q) In addition to the authority conferred on April 9, 1907, upon the department to order the installation and maintenance of interlocking devices and appliances at railroad crossings in this state, the department may order any carriers subject to this chapter whose railroad lines cross each other at grade, or to order any carrier subject to the provisions of this chapter whose line of railroad crosses any stream in this state by a swing or draw bridge, to install, maintain, or operate, at the crossing, or at the bridge, an approved interlocking and derailing device, or to make connecting or other changes in any existing device. Notice shall be given the carriers, as in other proceedings before the department, and plans submitted and approved by the department, and the department shall determine, when necessary, or when the carriers fail to agree, the division of expense for the construction, maintenance, and operation of the interlocker, and may assign to one (1) of the connecting lines the construction, maintenance, and operation thereof. Every carrier which shall fail to install such interlocker or make such changes within the time fixed by the department shall forfeit and pay to the state the sum of one hundred dollars (\$100) for each week that the failure shall be continued. The carrier or carriers shall not be

requested to install a device in any city or incorporated town in this state until the city or town legislative body shall approve the same, by resolution, duly entered of record. This subsection does not apply to any interurban railroad crossing, any railroad, interurban railroad, any street, highway, or private right-of-way in any city or town in this state.

(r) The department, whenever it determines that life and property will be best secured thereby, shall order the operation of any interlocking device in use in this state to be discontinued until the same shall be put in the condition required by the department. The operation of a device by a carrier, after the same has been forbidden by the department, is unlawful.

(s) The department may, on the application of any railroad corporation, authorize the corporation to use any safeguard or device, approved by the department, in place of any safeguard or device required by this chapter. The same penalties for neglect or refusal to install or use the same shall be incurred and imposed as for a failure to install or use the safeguard or device required by this chapter, in lieu of which the same is to be used.

(t) Every railroad shall, when within the railroad's power to do, and upon reasonable notice, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight in carload lots. In case of insufficiency of cars at any time to meet all requirements, cars as are available shall be distributed among the several applicants therefor in proportion to the applicant's respective immediate requirements, without discrimination between shippers or competitive or noncompetitive places; however, preference may be given to shipments of livestock and perishable property.

(Formerly: Acts 1905, c.53, s.3; Acts 1907, c.241, s.3; Acts 1913, c.268, s.1; Acts 1917, c.48, s.1.) As amended by P.L.62-1984, SEC.1; P.L.384-1987(ss), SEC.11; P.L.8-1989, SEC.48; P.L.18-1990, SEC.34; P.L.8-1993, SEC.136.

IC 8-3-1-2

"Railroad" defined

Sec. 2. The term "railroad" as used in this chapter shall mean and include any railroad whether its locomotives are powered by steam, combustion-type fuel or electricity other than a hobby, tourist, amusement, and non-freight-carrying railroad.

(Formerly: Acts 1905, c.53, s.3a; Acts 1963, c.182, s.1.) As amended by Acts 1976, P.L.26, SEC.1.

IC 8-3-1-3

Rates and charges; services or facilities; change; hearings; compelling production of evidence

Sec. 3. (a) Before any rates or charges of railroads or express companies or other carriers or companies subject to this chapter shall be revised or changed under this chapter, and before any order shall be made by the department changing the rules of any such company

respecting car service, the transfer or switching of cars from one railroad to another, or respecting the location or construction of sidings and connections between roads or respecting joint rates or charges by two (2) or more of such companies, the department shall give the company or companies affected by such proposed order or revision not less than ten (10) days written notice of the time and place where such rates or charges or the matters involved in said proposed order shall be considered, and such company shall be entitled to a hearing at the time and place specified in such notice and shall have process to enforce the attendance of the company's witnesses. All process provided for in this section shall be served as in civil cases.

(b) The director of the department, for the purposes of this chapter, may administer all oaths proper or necessary in the course of any hearing or investigation provided for by this chapter, or in the dispatch of any business concerning the department or the department's duties. Subpoenas commanding the attendance of witnesses and the production of papers, bills of lading, or other evidence of shipment, way-bills, books, accounts, and other documents deemed necessary by the department in any proceeding pending before the department may be issued by the department and served by reading or by copy, and such subpoenas shall be served and the attendance of all such witnesses enforced as provided for in this chapter.

(Formerly: Acts 1905, c.53, s.4; Acts 1907, c.241, s.4.) As amended by P.L.62-1984, SEC.2; P.L.384-1987(ss), SEC.12.

IC 8-3-1-4

Rates and charges; change; evidence; proceedings to revise

Sec. 4. In all proceedings by or before the department as provided in this chapter, and in all proceedings in any court in this state as provided in this chapter, the department and such courts shall receive in evidence all schedules of rates and charges and rules in force by such carriers in this state and filed with the department as provided in this chapter and of all such rates and rules as shall be adopted by the department or ordered observed by any court of this state as provided in this chapter without formal proof thereof being made, and the department and such courts shall likewise also receive in evidence the contents of all reports made to the department by such carriers as required in this chapter, and of all official and statistical reports and publications, published by the bureau of statistics in this state, or by the department of local government finance, by the Interstate Commerce Commission, and by the department having control of the federal census and of the United States commissioner of corporations, without formal proof being offered concerning authenticity.

(Formerly: Acts 1905, c.53, s.5; Acts 1907, c.241, s.5.) As amended by P.L.62-1984, SEC.3; P.L.384-1987(ss), SEC.13; P.L.90-2002, SEC.314.

IC 8-3-1-5

Rates and charges; change; complaints, discriminatory rates, investigations, and corrections; requiring performance of general duties

Sec. 5. (a) In addition to the authority vested in the department to determine what shall be just, reasonable, and indiscriminative rates for further observance, upon complaint filed as provided in this chapter, whenever the department determines that the rates charged by such carriers upon any kind of property in this state, or that the rates upon any carrier's lines in this state, or that any class of rates in force upon the carrier's lines in this state, or any part thereof, are excessive, or unjust, or discriminative, or unduly prejudicial, or in violation of the statutes of this state, shall investigate the same and, for that purpose, the department shall give to the carrier or carriers interested therein twenty (20) days notice of the purpose to make such investigation, stating what rates are to be investigated and requiring the carrier so notified to appear at the time and place specified in such notice and to be heard therein, if they so desire. At any hearing, any party interested in such rates shall be heard by the director of the department or a person designated by the director, either in person or by counsel, and the department may after such investigation, make such corrections, alterations, changes, or new rules or rates as may be necessary to prevent injustice or discrimination.

(b) In addition to the authority given to the department to enforce this chapter and the other statutes of this state as provided in this section, the department may, upon complaint filed by any person, firm, corporation, limited liability company, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization, and after a hearing thereon, enter an order requiring any such carrier to comply with the duty, obligations, and requirements of this chapter and all other statutes of the state concerning the duties, obligations, and requirements of such carriers in the performance of the carriers' duties to the public as common carriers.

(c) The department may grant rehearings in any case in which the department has made a final order, or to alter, change, or modify any final order made by it. All orders of the department, except as otherwise provided in this chapter, take effect within such reasonable time, not more than thirty (30) days after entry thereof, and continue in force for such period of time as shall be prescribed in the order of the department, unless the same shall be suspended, or set aside or modified by the department, or be suspended or set aside or modified upon judicial review.

(Formerly: Acts 1905, c.53, s.7; Acts 1907, c.241, s.7; Acts 1911, c.185, s.1.) As amended by P.L.62-1984, SEC.4; P.L.384-1987(ss), SEC.14; P.L.8-1993, SEC.137.

IC 8-3-1-6

Change of rates; establishing or revising; notice to railroad

Sec. 6. (a) The department shall, as soon as any revision or classification or schedule or rates or charges are adopted by it, furnish each railroad company affected thereby with a certified copy thereof in suitable form, showing the revision, alteration, or rule made by the department, to be delivered to each such carrier by United States mail directed to some officer or agent of the carrier in this state.

(b) This chapter does not authorize or empower the department, or any court of this state, to establish, change, or modify any rate or charge for any service to be performed by any common carrier in this state where the rate or charge is established on or after April 9, 1907, by any law of this state.

(Formerly: Acts 1905, c.53, s.8; Acts 1907, c.241, s.8.) As amended by P.L.62-1984, SEC.5; P.L.384-1987(ss), SEC.15.

IC 8-3-1-7

Investigations; inspection of books and papers; examination of witnesses; compelling production of evidence; violation

Sec. 7. In any matter or controversy under investigation by the department, the director or a person designated by the director may inspect the books, papers, or other documents of any railroad company subject to this chapter, and examine, under oath, any officer, agent, or employee of the railroad company in relation to the company's business and affairs. The department may also exercise like powers as to all other persons having books, papers, documents, or information bearing upon the investigation. If any railroad company or other person fails to permit any authorized person to examine its books, papers, or other documents, the railroad company or other person commits a Class C infraction. Each day of violation constitutes a separate offense. A person who demands access to the documents must produce proof of the person's authority to make the inspection.

(Formerly: Acts 1905, c.53, s.9.) As amended by Acts 1978, P.L.2, SEC.819; P.L.384-1987(ss), SEC.16.

IC 8-3-1-8

Rates and charges; filing, posting, and publication of schedules; notice of changes

Sec. 8. (a) Every common carrier subject to this chapter shall file with the department, print, and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on the carrier's own route, and between points on the carrier's own route and points on the route of any other carrier via railroad where a through route and joint rate has been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection the separately established rates, fares, and charges applied to the through transportation.

(b) The schedules printed by any such common carrier shall:

(1) plainly state the places between which property and

passengers will be carried;

(2) contain the classification of freight in force; and

(3) state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee.

(c) This section applies to all traffic, transportation, and facilities defined in this chapter. The department may, upon petition, or on the department's own initiative, when it is shown such relief will not be inconsistent with the public interest, grant relief from posting provisions herein provided.

(d) No change shall be made in the rates and charges or joint rates and charges or any rule for or in connection with the transportation of property which have been filed and published by any common carrier in compliance with this section, except after thirty (30) days notice to the department and publication. No change shall be made in the fares and charges or any rule for or in connection with the transportation of passengers which have been filed and published by any common carrier in compliance with the requirements of this section, except after ten (10) days notice to the department and publication. Such notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. The department may, for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions. Each application requesting permission to deviate from the commission's tariff publishing regulations shall be accompanied by a filing fee of fifteen dollars (\$15). The department may make suitable rules for the simplification of schedules of rates, fares, charges, and classifications, and to permit in such rules the filing of an amendment of or change in any rate, fare, charge, or classification without filing complete schedules covering rates, fares, charges, or classifications not changed if, in its judgment, not inconsistent with the public interest.

(e) The names of the several carriers which are parties to any joint tariff shall be specified therein and each of the parties, thereto, other than the one filing the same, shall file with the department such evidence of concurrence therein or acceptance thereof as may be required or approved by the department, and where such evidence of concurrence or acceptance is filed it is not necessary for the carriers filing same also to file copies of the tariffs in which they are named as parties.

(f) Every common carrier subject to this chapter may be required by the department, if in the department's discretion the public interest would be better served, to file with the department copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by this chapter to which it may be a party.

(g) Schedules required to be filed by this chapter shall be published, filed, and posted in such form and manner as the department by rule shall prescribe. The department may reject any schedule filed with the department which is not in accordance with this section and with such rules. Any schedule rejected by the department is void and its use is unlawful.

(h) No carrier, unless otherwise provided in this section, shall engage or participate in the common carrier transportation of passengers or property, as defined in this chapter, unless the rates, fares, and charges on which the same are transported by such carrier shall have been filed and published in accordance with this section, nor shall any carrier charge, demand, collect, or receive a different compensation for such common carrier transportation of passengers or property or for any service in connection therewith between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff, filed and in effect at the time, neither shall any carrier, except by order of the department, refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, or extend to any shipper or person any privileges or facilities in the common carrier transportation of passengers or property, except such as are specified in such tariffs. Where it is necessary for property to be transported or other service as a common carrier to be rendered at once by such carrier, and no rates for the transportation of the same or such other service are applicable thereto and the emergency is such that a rate therefor cannot be published and filed according to law, the department may, upon request of any interested carrier or shipper, permit the carrier to transport such property or render such service upon a rate or rates then determined by the department, or, the department may permit such transportation or other service, the rate to be thereafter reasonably adjusted by the shipper and carrier, subject to the approval of the department. Such carriers shall, as soon as possible after making a request of the department, file with the department a schedule of rates covering the future transportation of such property or such other service performed as a common carrier.

(Formerly: Acts 1905, c.53, s.10; Acts 1907, c.241, s.9; Acts 1911, c.225, s.1; Acts 1949, c.151, s.1; Acts 1971, P.L.86, SEC.1.) As amended by P.L.384-1987(ss), SEC.17.

IC 8-3-1-9

Investigatory powers; complaint procedures; freight rate violations

Sec. 9. (a) The department may elicit all information necessary to the hearing and consideration of any complaint made to the department and may elicit from any railroad company or companies,

or any other person or corporation to be affected by any such investigation, any and all information necessary to the consideration and determination of any and all questions over which the department shall have jurisdiction, and, for said purpose, the department may submit blanks provided for the purpose of eliciting such information or may submit written interrogatories to such railroad company or companies or person or corporation, and said blanks shall be properly filled out and said interrogatories answered as to answer fully and correctly each question therein propounded, and in case they are unable to answer any question, they shall give a satisfactory reason for their failure, and their said answers, duly sworn to by the proper officers of said company or corporation or by said person, shall be returned to the department within the time fixed therefor by the department in the department's order, or the department may use such other means of securing such information as the department considers expedient.

(b) If any such carrier, the carrier's officer or employee, or any other person or corporation or the person's or corporation's agents or employees fail or refuse to fill out and return any blank or to answer any interrogatories as above required, or fail or refuse to answer any questions therein propounded, or give a false answer to any such question or shall evade the answer to any such question, such carrier, officer, employee, or person commits a Class C infraction.

(c) The department, in all investigations being held by the department, and in all proceedings pending before the department, may require any such carrier, other party or corporation to produce before the department, to be used as evidence in such investigation or proceedings, any book, record, contract, letter, paper, or other document in the possession, or under the control, or subject to the order, of any such carrier, other party or corporation, which is necessary or proper to be considered in evidence in any such proceedings, and in case any such carrier or other party or corporation shall fail or refuse to produce the same, such carrier, or other party or corporation shall forfeit and pay to the state of Indiana a sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), to be collected as provided in this chapter.

(d) The department shall publish, with annotations, for the information of the public, the laws of this state concerning the carriers subject to this chapter.

(e) When, on the complaint of any interested person or corporation, the department shall, on the investigation of such complaint, be convinced that the freight rates on any railroad in Indiana engaged in interstate commerce are excessive, or levied or laid in violation of the interstate commerce law, or the rules of the interstate commerce commission, the superintendent, agent, or other official of the said railroad companies shall be notified in writing of the facts and requested to reduce or correct them, as the case may be. When the rates are not changed or the proper corrections are not made according to the request of the department, the latter is authorized and empowered to notify the interstate commerce

commission and to apply to it for relief.

(f) Whenever any property is received by any common carrier subject to the provisions of this chapter to be transported from one (1) place to another within the state, it shall, upon demand of the shipper, issue a receipt or bill of lading therefor, naming therein the classification of said freight and the rate of freight at which the same is to be carried. Nothing in this subsection abridges or lessens the liability of any such carrier under other laws, or prevents such carrier from issuing a nonnegotiable bill of lading for delivery only to the person named therein. All statements rendered for transportation charges shall show character of shipments, weight, rate, and charges, before demanding payment.

(Formerly: Acts 1905, c.53, s.11; Acts 1907, c.241, s.10; Acts 1911, c.225, s.2.) As amended by Acts 1978, P.L.6, SEC.12; P.L.384-1987(ss), SEC.18.

IC 8-3-1-10

Attendance of witnesses and production of books and papers; requirement; contempt

Sec. 10. For the purposes of this chapter, the department may require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, or in any proceeding pending before the department. Such attendance of the witnesses and the production of such documentary evidence may be required at any designated place of hearing in this state. And in case of disobedience to a subpoena, the department, or any party to a proceeding before the department, may invoke the aid of any circuit court of this state in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under this provision. And any of the circuit courts of this state, within the jurisdiction of which any such inquiry or hearing is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any such carrier subject to the provisions of this chapter, or other person, issue an order requiring such carrier or other person to appear before the department and produce books and papers, if so ordered, and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding, nor shall any such witness so compelled to testify against himself be thereafter prosecuted for any crime concerning which he has been compelled to give testimony. Instead of requiring the personal attendance of any witness, a deposition may be taken at the instance of a party in any proceeding or investigation pending before the department at any time after such investigation has been commenced, or after any such complaint has been filed and notice thereof duly served. The department may also order testimony to be taken by deposition in any

proceeding or investigation pending before it at any stage of such proceeding or investigation. Such deposition shall be taken, certified, and published in the manner required under procedure in civil cases, or in such other manner as the department, in its order, may direct. And any person whose deposition is being so taken may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the department as provided in this section. If a witness who is sought to be examined by the department at any hearing or investigation conducted by or proceeding pending before the department refuses to answer any question addressed to the witness by the department pertinent to the matter then being heard or investigated, or refuses to produce a book, paper, or other document in his possession or power and pertinent to such matter, and required by the department to be produced before the department, or declines to testify before the department, the department may report such fact to any circuit or superior court of the county wherein such hearing, investigation, or proceeding is being conducted, and the court shall order the witness to answer such question or questions and produce such book, paper, or other document before the department, or give testimony in the hearing investigation, or proceeding, and on failure or refusal to obey the order, such witness shall be dealt with by the circuit superior court for contempt.

(Formerly: Acts 1905, c.53, s.12; Acts 1907, c.241, s.11; Acts 1911, c.225, s.3.) As amended by P.L.62-1984, SEC.6; P.L.384-1987(ss), SEC.19.

IC 8-3-1-11

General penalty provision; rate discrimination

Sec. 11. (a) A carrier subject to this chapter who knowingly violates or fails to comply with this chapter commits a Class B infraction.

(b) A carrier who fails to comply with any final order made against it by the department in any proceeding pending before the department, in which any carrier is a party, unless the order is suspended, annulled, or set aside by some court, shall forfeit and pay to the state for each violation of any such order a penalty of not more than one thousand dollars (\$1,000).

(c) A carrier subject to this chapter who knowingly charges, collects, demands, or receives from any person a different rate, charge, or compensation for the transportation of persons or property, or for any service performed or to be performed by the carrier, than that fixed in the schedule of rates filed with the department, the schedule of rates adopted by the department, or the schedule of rates ordered observed by any court, commits a Class A infraction.

(Formerly: Acts 1905, c.53, s.13; Acts 1907, c.241, s.12.) As amended by Acts 1977, P.L.2, SEC.40; Acts 1978, P.L.2, SEC.820; P.L.384-1987(ss), SEC.20.

IC 8-3-1-12

Discrimination; rates or services

Sec. 12. (a) If any railroad subject hereto, directly or indirectly, or by any special rate, rebate, drawback, or other device, shall charge, demand, collect, or receive from any person, firm, limited liability company, or corporation a different compensation for any service rendered or to be rendered by the railroad than the railroad charges, demands, collects, or receives from any other person, firm, limited liability company, or corporation for doing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, the railroad commits unjust discrimination, which is prohibited.

(b) It is also unjust discrimination for any such railroad company to make or give any undue or unreasonable preference or advantage to any particular person, firm, corporation, limited liability company, or locality, in connection with the transportation of any persons or property, or to subject any particular kind of traffic or any particular person, place, or locality to any undue or unreasonable prejudice, delay, or disadvantage.

(c) Every railroad company which fails or refuses to receive and transport without unreasonable delay or discrimination the passengers, tonnage, and cars, loaded or empty, of any connecting carrier, and every railroad company which fails or refuses to transport and deliver without unreasonable delay or discrimination any passengers, tonnage, or cars, loaded or empty, destined to any point on or over the line of any connecting line of railroad, commits unjust discrimination. However, perishable freights of all kinds and live stock shall have precedence of shipment.

(d) It is unjust discrimination for any carrier subject to this section to charge or receive any greater compensation in the aggregate for the transportation of like kinds of property, or passengers, for a shorter than for a longer distance over the same line, in the same direction, the shorter distance being included in the longer. In cases where two (2) or more carriers have lines between common points in this state, and the line of one (1) of such carriers is shorter than the other, then the carrier having the longer line between any two (2) such common points may meet the rates between such common points which are established by the route having the shorter line if there is bona fide and actual competition between such two (2) routes for the business between such common points. Upon application to the department, it may, for the purpose of preventing manifest injury, authorize any such carrier to charge less for longer than for shorter distances for transporting persons and property. No manifest injustice shall be imposed upon persons, property, and places at intermediate points. Nothing in this section prohibits the department from approving what are known as "group rates" on any of the railroads in this state.

(e) Any railroad company violating any provision of this section commits unjust discrimination, and shall for such violation pay to the state of Indiana a penalty of not less than five hundred dollars

(\$500), nor more than five thousand dollars (\$5,000), to be recovered in a civil action instituted for that purpose in a court of competent jurisdiction.

(Formerly: Acts 1905, c.53, s.14; Acts 1907, c.241, s.13; Acts 1935, c.272, s.1; Acts 1973, P.L.63, SEC.2; Acts 1975, P.L.76, SEC.2.) As amended by P.L.384-1987(ss), SEC.21; P.L.8-1993, SEC.138.

IC 8-3-1-13

Rates and charges; special rates, rebates, or false billings; offenses

Sec. 13. (a) An agent, officer, or employee of any such carrier who knowingly, by any special rate, rebate, or drawback, by means of false billing, false classification, or false weighing, or by any other device charges, demands, collects, or receives from any person a different compensation for any service rendered or to be rendered by any such carrier for the transportation of persons or property, or for any other service, than that prescribed in the published tariffs then in force and on file with the department, which have been established by the department, or ordered to be observed by any court, commits a Class A misdemeanor.

(b) A person who knowingly accepts or receives any rebate or concession in respect to the transportation of persons and property by any such carrier, wholly within this state, or for any other service performed in connection therewith, whereby any such persons or property is, by false billing, false classification, false weighing, or any other device, transported at a less rate than that prescribed in the published tariffs then in force and on file with the department, which have been established by the department, or ordered to be observed by any court, commits a Class A misdemeanor.

(Formerly: Acts 1905, c.53, s.15; Acts 1907, c.241, s.14.) As amended by Acts 1977, P.L.2, SEC.41; Acts 1978, P.L.2, SEC.821; P.L.384-1987(ss), SEC.22.

IC 8-3-1-14

Extortion or discrimination; forfeiture; fines and penalties

Sec. 14. If a railroad company subject to this chapter shall do, cause to be done, or permit to be done, any matter, act, or thing in this chapter prohibited, or declared to be unlawful, or shall omit to do any act, matter, or thing herein required to be done by it, such railroad company shall be liable to the person or persons, firm, limited liability company, or corporation injured thereby for the damages sustained in consequence of such violation, and if the railroad company commits extortion or discrimination as by this chapter defined, then, in addition to such damages, such railroad company shall pay to the person, firm, limited liability company, or corporation injured thereby a penalty of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), to be recovered by civil action in any court of competent jurisdiction in any county into or through which such railroad runs. It is a defense to the action for such penalty that such overcharge was unintentionally and innocently made through a mistake of fact. Such

recovery as provided in this chapter does not affect a recovery by the state of any penalty provided for such violation.

(Formerly: Acts 1905, c.53, s.16.) As amended by P.L.62-1984, SEC.7; P.L.384-1987(ss), SEC.23; P.L.8-1993, SEC.139.

IC 8-3-1-15

General penalty provision

Sec. 15. If any railroad company shall willfully violate any other provision of this chapter and shall do any other act prohibited by this chapter, or shall fail or refuse to perform any other duty enjoined upon it, for which a penalty has not been provided in this chapter, for every such act of violation, it shall pay the state of Indiana a penalty of not more than one thousand dollars (\$1,000), to be recovered in a civil action to be instituted for that purpose in any court of competent jurisdiction.

(Formerly: Acts 1905, c.53, s.17.) As amended by P.L.62-1984, SEC.8.

IC 8-3-1-16

Penalties and forfeitures; recovery

Sec. 16. Except as provided in this chapter, all penalties and forfeitures provided for in this chapter shall be recovered in suits brought by and in the name of the department in any circuit or superior court of any county in which any carrier operates.

(Formerly: Acts 1905, c.53, s.18; Acts 1907, c.241, s.15.) As amended by P.L.62-1984, SEC.9; P.L.192-1986, SEC.6; P.L.384-1987(ss), SEC.24.

IC 8-3-1-17

Certified copies or transcripts of classifications, rates, rules, or orders

Sec. 17. Upon application of any person, the department shall furnish certified copies of any classification, rates, rules, or orders, and such certified or printed copies published by authority of the department shall be admissible in evidence in any suit and sufficient to establish the fact that any charge, rate, rule, order, or classification therein contained and which may be at issue in the trial is the official act of the department. A substantial compliance with the requirements of this chapter is sufficient to give effect to all of the classifications, rates, charges, rules, regulations, requirements, and orders made and established by the department, and none of them shall be declared inoperative for any omission of a technical matter in the performance of such act. The director of the department shall charge for all such certified copies and transcripts, except those ordered delivered by direction of the department, such sums as the department may order, and all funds coming into the hands of the director of the department on account of such, any such charges made by the department, and from all other sources and due to the department, shall be by the director of the department daily paid into the state treasury.

(Formerly: Acts 1905, c.53, s.19; Acts 1907, c.241, s.16.) As amended by P.L.62-1984, SEC.10; P.L.384-1987(ss), SEC.25.

IC 8-3-1-18

Information to department; enforcement powers of department

Sec. 18. The department may inquire into the management of the business of all common carriers subject to this chapter, and shall keep itself informed as to the manner and method in which the same is conducted, and may obtain from such carriers full and complete information necessary to enable the department to perform the duties and carry out the objects for which the department was created. The department shall enforce this chapter and all the other statutes of this state the enforcement of which is devolved upon the department, and such other statutes of this state as shall prescribe the duties and obligations and regulate the conduct of the carriers subject to this chapter in their dealings with the public and each other as common carriers of passengers and property in this state, and, to enable the department so to do, the department may institute and prosecute, in its name, any appropriate action at law or suit in equity, in any circuit or superior court of this state, against any such carrier to compel it to observe the requirements of this chapter and all other statutes of this state, and the orders of the department made under this chapter or any other law of this state, and all orders and judgments of any court in this state made under this chapter; or to restrain any such carrier from the further continuance of any act or practice suffered or authorized by it in violation of this chapter, the other statutes of this state, the orders of the department or a court made under this chapter, and the costs and expenses of such proceedings shall be audited and approved by the auditor of state and paid as provided in this chapter. *(Formerly: Acts 1905, c.53, s.20; Acts 1907, c.241, s.17.) As amended by P.L.62-1984, SEC.11; P.L.384-1987(ss), SEC.26.*

IC 8-3-1-19

Scope of chapter

Sec. 19. (a) The provisions of this chapter apply only to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing, and handling of such property, and to all charges connected therewith, including icing and mileage charges.

(b) This chapter applies to all corporations, individuals, associations of individuals, their lessees, trustees, or receivers, appointed by any court, that now or may hereafter own, operate, manage, or control any railroad, electric interurban or suburban railroad, or part of any such railroad, as a common carrier in this state, or cars, car companies, freight and freight line companies, private tracks and sidings when controlled or used by any such common carriers, or other equipment used thereon, or bridges, terminals, or side tracks, or any docks or wharves or storage elevators used in connection therewith, whether owned by such railroad or otherwise.

(c) This chapter applies to all such corporations, companies, individuals, associations of individuals, their lessees, trustees, or receivers, appointed by any court, as are engaged in the express business or sleeping car business, and this chapter applies to all express companies and sleeping car companies.

(d) The terms "carrier" or "carriers", "railroad", "railroad company", or "railway" or "railway company", whenever used in this chapter, means and refers to all such railroads, electric interurban or suburban railroads, express companies, and sleeping car companies so subject to the provisions of this chapter.

(e) The provisions of this chapter do not apply to any hobby, tourist, amusement, and nonfreight carrying railroad.

(Formerly: Acts 1905, c.53, s.21; Acts 1907, c.241, s.18.) As amended by Acts 1976, P.L.26, SEC.2; P.L.384-1987(ss), SEC.27.

IC 8-3-1-20

Right of action for penalty or forfeiture, release, or waiver

Sec. 20. This chapter does not release or waive any right of action by the state or any person for any right, penalty, or forfeiture which may arise under any law of this state. All penalties accruing under this chapter shall be cumulative of each other, and a suit for or recovery of one (1) shall not be a bar to the recovery of any other penalty.

(Formerly: Acts 1905, c.53, s.22.) As amended by P.L.62-1984, SEC.12; P.L.384-1987(ss), SEC.28.

IC 8-3-1-21

Accident reports; complaints on equipment and services; investigation and correction; railroad crossings and grade separations; construction; and maintenance

Sec. 21. (a) It is the duty of the department to keep informed as to the condition of railroads and railways and the manner in which they are operated with reference to the security and accommodation of the public, and as to the compliance of the several corporations with their charters and the laws of the state.

(b) Every railroad company subject to this chapter shall report again to the department by telegraph or telephone as soon as possible after it has occurred, every accident and the general cause thereof, involving loss of life or serious injury to passenger or employee, and, within twenty (20) days after such accident, the company shall make a full report of the cause thereof to the department and the department shall investigate in such manner and by such persons as it may deem best the causes of any accident on any railroad involving loss of life, and every corporation, at all times, shall furnish to the department, its appointees, or its inspectors any information relative to such accidents. Such reports and information shall not be used in the trial of any suits for damages arising out of said accidents. After such investigation, the department shall make a report to the railroad company of its conclusion and recommendations regarding such accidents and the causes thereof, and the proper steps to be taken by

the railroad company to prevent like accidents, and unless the railroad company shall, in a reasonable time, comply with and carry out said recommendations, said department shall make the same public, if it shall deem best so to do, by publishing the same in any newspaper or newspapers in the state, or in the locality where the accident took place.

(c) Whenever the department secures reliable information, or complaint shall have been made, or, because of reports made by its inspectors, shall have reason to believe, that any carrier in this state does not keep its road or equipment in proper condition and repair for the health and safety of its employees or the public, or that any carrier as now required by law does not maintain adequate and suitable passenger depot buildings and platforms, said depot with the passageway to the adjacent street to be well lighted, to be kept well heated and in approved sanitary condition, supplied with wholesome water and closets for men and women, and kept open at least one (1) hour before and fifteen (15) minutes after the arrival of each passenger train stopping at said station, or that any carrier does not keep its passenger cars well cleaned and in good sanitary condition, well lighted and properly heated, and supplied with closets for men and women, or that any carrier does not keep and maintain adequate and suitable freight depots, buildings, switches, and side tracks for the receiving, protecting, handling, forwarding, and delivery of all freight offered for shipment or received at said stations, or that any carrier or carriers do not so run, operate, or schedule their passenger trains as to make reasonable and proper connections at places where they intersect each other, or that there is a dangerous defect in connection with the operation of any railroad or in any railroad bridge, culvert, curve, embankment, water tank, crane, frog, railroad or wagon crossing, ties or tracks, motive power, stations, rolling stock, machinery, or in any roadbed or ground used in connection with the operation of any railroad or any dangerous neglect or fault in the construction, equipment, or management of any railroad within the state of Indiana, it shall be the duty of the department to cause such investigation to be made as it may deem necessary. When such investigation shall have been made, the department shall make a report to the manager or superintendent of the railroad company. In said report and recommendations, the department shall make an accurate statement of the time such examination was made, of the exact location, character, and extent of such defects or omissions, if any such shall have been found, and shall also recommend such reasonable changes and improvements, additions, buildings, and accommodations, as are, in the opinion of the department, necessary to remedy such faults, neglects, requirements, or defects. Such recommendations shall set out specifically a reasonable time within which such improvements or changes or additions shall be made by the railroad company, and if they are not so made within said time so specified, then the department, if it deem it best so to do, may commence proceedings by mandamus or other remedy, in some circuit or superior court having jurisdiction of the carriers, to enforce

compliance with its order. All courts, circuit, superior, appellate, or supreme, as shall obtain jurisdiction in these cases, shall give preference to such cases and shall hear and determine the same speedily to the end that the public interests may not suffer.

(d) Whenever the department shall secure reliable information, or complaint shall have been made, or, because of reports made by its inspectors, shall have reason to believe, that any carrier in this state does not provide and adequately maintain sanitary drinking water and sanitary dispensers therefor on all locomotives and cabooses in use, or that any such carrier does not provide a room or rooms at all terminals, for the use of the department's employees, containing adequate wash basins, shower baths, inside toilets, sanitary drinking water dispensed in a sanitary manner, and sufficient lockers for checking employees' clothing, it shall be the duty of the department to cause such investigation to be made as it may deem necessary, and when such investigation shall have been made, the department shall make a report to the manager or superintendent of the railroad company. In said report and recommendations, the department shall make an accurate statement of the time such examination was made, of the exact location, character, and extent of such defects or omissions, if any such shall have been found, and shall also recommend such reasonable changes and improvements, additions, buildings, and accommodations, as are, in the opinion of the department, necessary to remedy such faults, neglects, requirements, or defects. Such recommendations shall set out specifically a reasonable time within which such improvements or changes or additions shall be made by the railroad company, and if they are not so made within said time so specified, then the department, if it considers it best so to do, may commence proceedings by mandamus or other remedy, in some circuit or superior court having jurisdiction of the carriers, to enforce compliance with its order. All courts, circuit, superior, appellate, or supreme, as shall obtain jurisdiction in these cases, shall give preference to such cases, and shall hear and determine the same speedily to the end that the employees' interests and the public interests may not suffer.

(e) If two (2) or more railroad corporations whose tracks cross each other at the same level, agree to separate the grades, they may apply to the department, which shall thereupon determine when, and in what manner and by which corporation said work and each portion of it shall be done, and shall apportion all charges and expenses caused by making such alterations and all future charges for keeping the necessary structure connected therewith in repair among said corporations. For said purpose, the corporations may, under the direction of the department, make all necessary changes in the location, grade, and construction of said railroad, and, so far as may be necessary, may take additional land therefor, and may raise, lower, or otherwise change any and all highways. In the exercise of such powers, said corporations, and any person who sustains any damages thereby, shall have all rights, privileges, and remedies, and be subject to all the duties, liabilities, and restrictions provided by

law in the case of land taken by railroad corporations.

(f) If one (1) of two (2) or more railroad corporations whose tracks cross each other at the same level, desires to separate the grades, said railroad corporation may file its petition with the department, with blueprints and maps attached, setting out in detail how such crossing can best be made. Thereupon, the department shall give notice to the corporation or corporations complained of, as in other cases, and such petition shall be tried, and the department shall determine whether or not said grades shall be separated, in what manner and by which corporation said work and each portion of it shall be done, and shall apportion all charges and expenses caused by making such alterations, and all future charges for keeping the necessary structure connected therewith in repair among said corporations. For said purpose, the corporations may, under the direction of the department, make all necessary changes in the location, grade, and construction of said railroads, and, so far as may be necessary, may take additional land therefor and may raise, lower, or otherwise change any and all highways. In the exercise of such powers, said corporations, and any person who sustains any damage thereby, have all the rights, privileges, and remedies and are subject to all the duties, liabilities, and restrictions provided by law in the case of land taken by railroad corporations.

(Formerly: Acts 1905, c.53, s.23; Acts 1907, c.241, s.19; Acts 1911, c.76, s.1; Acts 1933, c.58, s.1; Acts 1949, c.9, s.1.) As amended by P.L.12-1984, SEC.2; P.L.384-1987(ss), SEC.29.

IC 8-3-1-21.1 Version a

Abandonment of railroad right-of-way; notices; removal of crossing control devices; failure to comply; cost; recreational use

Note: This version of section effective until 7-1-2005. See also following version of this section, effective 7-1-2005.

Sec. 21.1. (a) Upon receiving notice of intent to abandon railroad rights-of-way from any railroad company, the department shall, upon receipt, notify:

- (1) the county executives, county surveyors, and cities and towns of the counties affected;
- (2) the Indiana economic development corporation; and
- (3) the department of natural resources;

of the notice.

(b) Within one (1) year of a final decision of the Interstate Commerce Commission permitting an abandonment of a railroad right-of-way, the railroad shall remove any crossing control device, railroad insignia, and rails on that part of the right-of-way that serves as a public highway and reconstruct that part of the highway so that it conforms to the standards of the contiguous roadway. The Indiana department of transportation or the county, city, or town department of highways having jurisdiction over the highway may restore the crossing if the unit:

- (1) adopts construction specifications for the project; and
- (2) enters into an agreement with the railroad concerning the

project.

The cost of removing any crossing control device, railroad insignia, rails, or ties under this subsection must be paid by the railroad. The cost of reconstructing the highway surface on the right-of-way must be paid by the Indiana department of transportation or the county, city, or town department of highways having jurisdiction over the crossing.

(c) If a railroad fails to comply with subsection (b), the Indiana department of transportation or the county, city, or town department of highways having jurisdiction over the crossing may proceed with the removal and reconstruction work. The cost of the removal and reconstruction shall be documented by the agency performing the work and charged to the railroad. Work by the agency may not proceed until at least sixty (60) days after the railroad is notified in writing of the agency's intention to undertake the work.

(d) This section does not apply to an abandoned railroad right-of-way on which service is to be reinstated or continued.

(e) As used in this section, "crossing control device" means any traffic control device installed by the railroad and described in the National Railroad Association's manual, Train Operations, Control and Signals Committee, Railroad-Highway Grade-Crossing Protection, Bulletin No. 7, as an appropriate traffic control device.

(f) Costs not paid by a railroad under subsection (b) may be added to the railroad's property tax statement of current and delinquent taxes and special assessments under IC 6-1.1-22-8.

(g) Whenever the Indiana department of transportation notifies the department of natural resources that a railroad intends to abandon a railroad right-of-way under this section, the department of natural resources shall make a study of the feasibility of converting the right-of-way for recreational purposes. The study must be completed within ninety (90) days after receiving the notice from the Indiana department of transportation. If the department of natural resources finds that recreational use is feasible, the department of natural resources shall urge the appropriate state and local authorities to acquire the right-of-way for recreational purposes.

(Formerly: Acts 1973, P.L.65, SEC.1.) As amended by Acts 1980, P.L.74, SEC.39; Acts 1982, P.L.62, SEC.3; Acts 1982, P.L.75, SEC.1; P.L.63-1984, SEC.1; P.L.84-1986, SEC.1; P.L.384-1987(ss), SEC.30; P.L.8-1989, SEC.49; P.L.18-1990, SEC.35; P.L.4-2005, SEC.114.

IC 8-3-1-21.1 Version b

Abandonment of railroad right-of-way; notices; removal of crossing control devices; failure to comply; cost; recreational use

Note: This version of section effective 7-1-2005. See also preceding version of this section, effective until 7-1-2005.

Sec. 21.1. (a) Upon receiving notice of intent to abandon railroad rights-of-way from any railroad company, the department shall, upon receipt, notify:

(1) the county executives, county surveyors, and cities and

- towns of the counties affected;
- (2) the Indiana economic development corporation;
- (3) the office of tourism development; and
- (4) the department of natural resources;

of the notice.

(b) Within one (1) year of a final decision of the Interstate Commerce Commission permitting an abandonment of a railroad right-of-way, the railroad shall remove any crossing control device, railroad insignia, and rails on that part of the right-of-way that serves as a public highway and reconstruct that part of the highway so that it conforms to the standards of the contiguous roadway. The Indiana department of transportation or the county, city, or town department of highways having jurisdiction over the highway may restore the crossing if the unit:

- (1) adopts construction specifications for the project; and
- (2) enters into an agreement with the railroad concerning the project.

The cost of removing any crossing control device, railroad insignia, rails, or ties under this subsection must be paid by the railroad. The cost of reconstructing the highway surface on the right-of-way must be paid by the Indiana department of transportation or the county, city, or town department of highways having jurisdiction over the crossing.

(c) If a railroad fails to comply with subsection (b), the Indiana department of transportation or the county, city, or town department of highways having jurisdiction over the crossing may proceed with the removal and reconstruction work. The cost of the removal and reconstruction shall be documented by the agency performing the work and charged to the railroad. Work by the agency may not proceed until at least sixty (60) days after the railroad is notified in writing of the agency's intention to undertake the work.

(d) This section does not apply to an abandoned railroad right-of-way on which service is to be reinstated or continued.

(e) As used in this section, "crossing control device" means any traffic control device installed by the railroad and described in the National Railroad Association's manual, Train Operations, Control and Signals Committee, Railroad-Highway Grade-Crossing Protection, Bulletin No. 7, as an appropriate traffic control device.

(f) Costs not paid by a railroad under subsection (b) may be added to the railroad's property tax statement of current and delinquent taxes and special assessments under IC 6-1.1-22-8.

(g) Whenever the Indiana department of transportation notifies the department of natural resources that a railroad intends to abandon a railroad right-of-way under this section, the department of natural resources shall make a study of the feasibility of converting the right-of-way for recreational purposes. The study must be completed within ninety (90) days after receiving the notice from the Indiana department of transportation. If the department of natural resources finds that recreational use is feasible, the department of natural resources shall urge the appropriate state and local authorities to

acquire the right-of-way for recreational purposes.
(Formerly: Acts 1973, P.L.65, SEC.1.) As amended by Acts 1980, P.L.74, SEC.39; Acts 1982, P.L.62, SEC.3; Acts 1982, P.L.75, SEC.1; P.L.63-1984, SEC.1; P.L.84-1986, SEC.1; P.L.384-1987(ss), SEC.30; P.L.8-1989, SEC.49; P.L.18-1990, SEC.35; P.L.4-2005, SEC.114; P.L.229-2005, SEC.6.

IC 8-3-1-21.2

Restoration; apportionment of costs

Sec. 21.2. (a) The department may order the apportionment of costs that result from the restoration, under section 21.1(b) of this chapter, of grade crossings with abandoned railroads among the railroads and the public agencies. After receiving a petition from a railroad or an affected public agency, the department shall:

- (1) give notice of the pending action;
- (2) provide an opportunity for the affected parties to be heard by the commission;
- (3) apportion the costs among the railroad and the public agency according to section 21.1 of this chapter; and
- (4) adopt rules under IC 4-22-2 to establish the respective responsibilities of railroads and public agencies performing restoration work on grade crossings with abandoned railroads.

(b) The department shall determine the reasonableness of the cost of the restoration charged to the railroad under section 21.1(c) of this chapter if the railroad petitions for that determination.

As added by Acts 1977, P.L.106, SEC.1. Amended by P.L.63-1984, SEC.2; P.L.17-1985, SEC.5; P.L.384-1987(ss), SEC.31.

IC 8-3-1-21.3

Improvement of street or highway intersecting railroad right-of-way; notice and assessment of cost to owner

Sec. 21.3. (a) When a public street or highway intersects with a railroad right-of-way that is not owned by a railroad, the public agency with jurisdiction over the street or highway may:

- (1) remove any crossing control devices;
- (2) remove railroad insignia, rails, or ties; or
- (3) reconstruct the highway so that it conforms with the standards of the intersecting street or highway.

(b) The public agency may not proceed under subsection (a) until the owner of the railroad right-of-way is given written notice of the agency's intention to undertake the work.

(c) The cost of the work shall be documented and charged to the owner, and if not paid by the owner, the cost may be added to the owner's property tax statement of current and delinquent taxes and special assessments under IC 6-1.1-22-8.

As added by P.L.95-1985, SEC.1.

IC 8-3-1-22

Abandoned railroad rights-of-way intersecting or crossing public highways; resurfacing

Sec. 22. If the department determines that the right-of-way of a railroad which intersects or crosses a public highway or street is abandoned, any unit of government may resurface that intersection or crossing.

As added by Acts 1982, P.L.75, SEC.2. Amended by P.L.384-1987(ss), SEC.32.

IC 8-3-1-23

Expenses; charges and payment

Sec. 23. Any expense incurred by the department, either upon a complaint against a railroad or upon a petition of any railroad, shall be charged and paid in the manner provided for public utilities under IC 8-1-6.

As added by P.L.384-1987(ss), SEC.33.

IC 8-3-1-24 Repealed

(Repealed by P.L.82-1991, SEC.1.)